THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. Nos.29190, 28787 of 1998 and 14374 of 2004
And
WPMP. No.17422 of 2002 in W.P.No.28787 of 1998

COMMON ORDER: (Per Hon'ble Sri Justice T.CH. Surya Rao)

The instant writ petitions are directed against the judgment dated 20-08-1998 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act 1982 (for short 'the Act') in L.G.C. No.57 of 1989, by seeking a writ of certiorari and to quash the same.

L.G.C. No.57 of 1989 was filed against as many as 25 respondents by the Revenue Divisional Officer, Hyderabad, as applicant under Section 8(1) of the Act seeking their eviction from the land covered by T.S. No.24, Ward No.9, Block 'H' of Shaikpet village situated at Road No.12 of Banjara Hills corresponding to old Survey No.403 admeasuring 12,387 square meters, on the premise that the respondents were the land grabbers.

It was the case of the applicant that the land in dispute is situated in Shaikpet village and is a part of the land in an extent of Ac.2967.27 guntas covered by survey No.403, which was classified as Government

poramboke land. During the survey and settlement operations in the year 1967, the survey of twin cities had taken place and that was notified in the Gazette in the year 1979.

As per the said survey, the schedule land forms part of T.S. No.26, Ward No.9, Block 'H' admeasuring 3 hectares equal to Ac.48.64 meters corresponding to old Survey No.403 of Shaikpet village was classified as Government land and thus the land in dispute which has been described in the schedule appended to the application is an absolute property of the Government.

During the course of inspection of the schedule land, the Revenue Divisional Officer noticed un-authorised structures on the land with asbestos sheets and some part was divided into plots as house sites. On enquiry, the applicant came to know that the respondents divided the schedule land into plots and have been selling the plots to different persons by assigning municipal door numbers of their own. One B. Venkateswar Rao resident of Plot No.878, Jubilee Hills, Hyderabad was offered to sell 500 square yards of the site by the 1st respondent under an agreement of sale dated 15-11-1983 executed by the 1st respondent. Thus the enquiry revealed that the disputed land, which is Government land, was grabbed by the respondents and they were trying to sell the said land to different persons.

It was further case of the applicant that during the regime of

Nizam, Revision Survey was taken up in 1346 Fasli and completed in 1352 Fasli and was announced on 16th Tir 1352 Fasli. Thereafter, all the phodi work was done on the basis of technical data prepared during the revision survey. Basing on that data,

the original survey Sethwar, revision survey record and vasool baqui, and the town survey of the twin cities was taken up during 1965. The survey authorities initially issued the notice under Section 6(1) of the Survey and Boundaries Act inviting objections from the interested persons. Notice under Section 9(2) was not issued to the occupants of the lands. As per the original survey record as well as revision survey record, the disputed land remained as Government land. Under Section 13 of the Survey and Boundaries Act, the notice was published and survey operations thus became final. According to the town survey records,

T.S. No.24 part Block 'H', Ward No.9 of Shaikpet village in Golconda Mandal was classified as Government land.

Sri P. Ram Mohan Rao S/o. Shankaraiah and others have grabbed the Government land to an extent of 12,387 square meters and constructed compound wall and rooms thus they have been in illegal occupation of the Government land without any entitlement to the land and thereby the respondents resisted the claim of the applicant.

Respondents 1 to 3 filed a counter. The stand seems to be that one late Aakula Mallaiah @ Adi Mallaiah was the occupant and lawful possessor from 1910 A.D. onwards and became pattadar of the land to

an extent of Ac.5.00 in old Survey No.129/7 and new Survey No.403/77, situated at Road No.12, Banjara Hills, which is Kancha Thattikhana of Shaikpet village. As the land belonged to Sarfekhas Mubarak of H.E.H. Nizam, he used to dry hides and skins on the said land as tenant of Sarfekhas. The Sarfekhas Mubarak offered the said land to Akula Mallaiah in view of his long standing possession for a sum of Rs.750/-. Thus Akula Mallaiah purchased the said land of Ac.5.00 by paying an amount of Rs.750/- and the land was assigned to him on patta basis and certificate of assignment of patta was issued by the District Collector, Atraf Balda, Sarfekhas Mubarak on 4th Isfandar 1342 Fasli (1932 AD) under their seal and signature and possession was delivered to him. The original of the said document patta was filed in a suit against Osman Ahmed and Kishanlal in O.S. No.3609of 1980 on the file of the VIII Assistant Judge, City Civil Court, Hyderabad. By virtue of the said patta, the ancestors of the respondents became the owners and pattadars of the land.

Akula Mallaiah was the father of A. Venkaiah, A. Sathaiah and A. Mallaiah and they were not impleaded as respondents in the case.

After Police action, the successor Government verified the facts by making spot inspection and recognized the patta of said land in the name of Adi Mallaiah and ultimately issued Khasra in 1954-55 against new Survey No.403/77. The name of Adi Mallaiah was also recorded in Sesala Pahani for the years 1955 to 1958 as titleholder of the said land

measuring Ac.5.00 against Survey No.403/77. The Revenue Inspector, Urban Tahasil, Hyderabad issued a distraint notice dated 06-07-1976 under section 8 of the Madras R.R. Act II of 1864 to the sons of late Adi Mallaiah in respect of Survey No.403/77 for realization of the arrears of the land revenue in an amount of Rs.1987.50 ps., for a continuous period of 16 years from 1950 to 1970. It was represented to the Tahasildar, Hyderabad Urban that they were not the defaulters and submitted land revenue receipts obtained by late Adi Mallaiah. Mutation of the names of the successors of Adi Mallaiah as per the will dated 06-03-1972 was pending without any hearing.

The Tahasil, Golconda Office issued a bank challan to pay land revenue of Rs.93.75ps., for the year 1980 for the said land, and the successors of A. Mallaiah paid the land revenue in State Bank of Hyderabad. The land revenue was also collected for the year

1980-81. Municipal number was allotted to the said property as

8-2-685/1/1. As aforesaid Adi Mallaiah executed a will deed on 06-03-1972 in favour of his sons, grand-sons, and grand-daughters and died in the year 1974 at Hyderabad thus the disputed land measuring Ac.5.00 devolved upon the 16 persons in equal shares. Ac.1.00 of the said land was left out for the road widening purpose. When an application filed for mutation before the Tahasildar, Golconda in respect of remaining Ac.4.00 of land along with a copy of the will, the Tahasildar insisted for clearing the arrears of the land revenue dues and accordingly land revenue was paid by means of bank challan. When the Special Deputy Collector, Banjara Hills, inspected the disputed land and tried to get the property

demolished, the petitioners got issued a suit notice through their counsel under Section 80 of Code of Civil Procedure to the District Collector, Hyderabad and the Special Deputy Collector, Government of Andhra Pradesh requiring them to continue the names of Adi Mallaiah in the records of rights.

When the revenue authorities tried to dispossess them under the provisions of the A.P. Land Encroachment Act, 1905, they filed W.P. No.2422 of 1982 to declare Section 7-A(1)(2) and (3) of A.P. Land Encroachment Act, 1905 as ultra vires of the Constitution of India and to prohibit the authorities from applying the provisions of the Land Encroachment Act 1905. The said writ petition was disposed of with a direction to the successors of Adi Mallaiah to seek proper remedy before the appropriate civil Court by giving ten weeks time while directing *status quo* to be maintained. In the meanwhile, Writ Appeal No.862 of 1982 was filed and the same was dismissed. Thereafter, they filed S.L.P. in Civil Appeal No.8508 of 1983, which was also dismissed by the Apex Court. The petitioners have been in possession of the said land since 59 years openly, peacefully and continuously in their own rights through Adi Mallaiah and perfected their title by adverse possession.

It was further their plea that the Special Court under the Act had no jurisdiction, except the civil Court.

Respondent Nos.6, 10, 15 and 17 filed a common counter. They adopted the counter filed by respondent No.1 to some extent. Respondent No.18 filed separate counter. Respondent Nos.20 and 22

filed a separate common counter. Respondent No.19 filed a separate counter. Respondent No.25 filed a memo adopting the counter filed by Respondent No.19.

On the basis of the above pleadings, the learned Special Court framed the following issues for trial.

"1. Whether the Government is owner of the application schedule property.

2. Whether the rival title set up by the respondents is true and valid?

3. Whether the respondents are land grabbers within the meaning of A.P. Act XII of 1982?

4. Whether the respondents perfected their title to the application schedule property by adverse possession?

5. To what relief?"

At the time of enquiry, P.Ws.1 to 3 were examined on the side of the applicant and Exs.A-1 to A-15 were got marked. On the side of the respondents R.Ws.1 to 7 were examined and Exs.B-1 to B-74 were got marked.

Appreciating the evidence, both oral and documentary thus adduced on either side, the learned Special Court was of the view that

the applicant was the owner of the disputed land and the rival title set up by the respondents was neither true nor valid and they failed to establish that they perfected the title by means of adverse possession. Consequently, the respondents were held to be grabbers of the land. The respondents 1 to 3, who sold the land in plots to other respondents, were directed to pay an amount of Rs.5,92,59,400/- within three months from the date of judgment as compensation to the State, failing which the said amount shall be recovered as arrears of land revenue by the Collector.

Having been aggrieved by the said judgment, the respondents 1 to 3 preferred W.P. No.29190 of 1998, respondents 6 to 9, 13, 15, 16, 18, 20, 21 and 25 preferred W.P. No.28787 of 1998 and respondents 22, 23 and 24 in L.G.C. No.57 of 1989 filed an application in WPMP. No.17422 of 2002 in W.P. No.28787 of 1998 seeking to come on record. The legal representatives of respondent No.5 filed W.P. No.14374 of 2004.

Since all the three writ petitions are directed assailing the judgment in L.G.C. No.57 of 1989, they can be disposed of together.

WPMP. No.17422 of 2002 can be considered, since the proposed parties therein are party respondents 22 to 24 in the main L.G.C. and the petition is accordingly ordered.

The learned counsel appearing for the petitioners represents that the Special Court committed an error of jurisdiction in having not

accepted the Exs.B-1, B-48 and B-49, certified copies issued by the competent authorities. It is their further contention that in the original Khasara pahani for the year 1954-55 the name of
Akula Mallaiah @ Adi Mallaiah was shown and therefore he was the pattadar of the disputed land and this glaring fact was omitted to be considered by the Special Court. Finally it was sought to be contended before us that at any rate, the writ petitioners cannot be treated as land grabbers, having regard to their long standing possession and the definition of land grabber as enjoined under Section 2 clause (d) and (e) of the Act. Lastly, it was contended that awarding of compensation against respondents 1 to 3 is quite unwarranted.

On the other hand, the learned Special Government Pleader contended that the findings given by the Special Court are impeccable and well founded, and warrants no interference from this Court.

The evidence of P.W.2, Mandal Revenue Officer, throw light upon the history of the land in dispute. According to the testimony of this witness, the village Shaikpet was surveyed initially in 1326 Fasli and Sethwar was issued in 1330 Fasli. As per the said survey and Sethwar, the Government land situated at Shaikpet was assigned Survey No.129 and the total extent covered by this survey number was Ac.3288.02 guntas. The said land was classified as poramboke and later pattas were granted for part of the said land. Therefore, a supplementary Sethwar was issued in 1331 Fasli,

sub-dividing thereby Survey No.129 into 10 parts as 129/1 to 129/10. Survey No.129/1 continued to be Government poramboke land with an extent of Ac.3097.39 guntas and Survey No.129/2 to 10 are the patta lands. The land covered in Survey No.129/1 in an extent of Ac.3097.39 guntas was assigned as "Kancha Thattikhana" i.e., grazing land. Again in 1334 Fasli, another supplementary Sethwar was issued but there was a boundary dispute between Shaikpet village and Yellareddyguda which was a Jagir village.

In that connection, Survey No.352 of Shaikpet village was deleted, therefore, total number of survey numbers of Shaikpet village was reduced to 352. Again supplementary Sethwar was issued in 1335 Fasli and another supplementary Sethwar was issued in 1346 Fasli. Survey Nos.129/1 to 10 were deleted and new survey Nos.353 to 404 were created in Shaikpet. Consequently, the area of Survey No.129/1 was correlated to Survey Nos.403 and 404 with an extent of Ac.3070.28 guntas and 16 guntas respectively.

Both the lands covered by Survey Nos.403 and 404 are Government lands. Survey Nos.129/11 to 87 were created and the extent of Survey No.403 was reduced to Ac.2967.27 guntas. Notices under Section 13 of Survey and Boundaries Act were issued and published in various Gazettes from 1970 onwards.

The evidence of this witness emphatically shows that there was no survey number like 403/77 in Shaikpet village. The testimony of this witness remains un-assailed. An effort was sought to be made on the question of the authority of this witness to speak the above statement of

facts. The witness deposed that though the records were not available in his office but were available in the office of the Deputy Director of Survey and Settlement, and he is well-versed with those records and was able to speak these facts.

The statement of facts remained un-assailed in the cross-examination. There are thus no reasons available to us to discard the testimony of this witness.

The specific case by the respondents was that the land in dispute is covered by Survey No.403/77 and Adi Mallaiah was the pattadar thereof. Admittedly, the respondents 1 to 3 herein are the heirs of the said Adi Mallaiah and his successors. In proof of the case of the respondents, they are very much relying upon Exs.B-1, B-48 and B-49. Ex.B-1 is the certified copy of Khasra Pahani of the year 1954-55, Ex.B-48 is the certified copy of Pahani of the year 1954-55 and Ex.B-49 is the certified copy of Sesala Pahani of the year 1955 to 1958. During the course of the evidence of P.W.1, the original Khasra Pahani was produced before the Court.

Xerox copies had been taken and were marked as Exs.B-2, B-3 and B-4 in this case.

It is the specific stand of the State that the name of Akula Mallaiah was shown in the Khasra Pahani in the original but his name was shown as encroacher along with the other names as against Survey No.403. The learned Special Court, which had the occasion to

peruse the original Khasara Pahani, was of the view that the names of several persons were shown as encroachers and the name of Akula Mallaiah was also shown as an encroacher No.77 at Serial No.74. The learned Special Court refused to accept Ex.B-1, certified copy of the Khasra Pahani issued by the City Civil Court. Similarly, it refused Ex.B-48 and B-49. The reasons,

of course, have been assigned by the learned Special Court in having refused to accept the Exs.B-1, B-48 and B-49. According to the learned Special Court, in Ex.B-1, the name of Akula Mallaiah was shown as pattadar in column No.8 and also as occupier in column 18 as against Survey No.403/77, but in the original

Khasra Pahani for the year 1954-55, names of several encroachers were shown from pages 252 onwards, including the name of

Akula Mallaiah as an encroacher as against the Survey No.77.

This contradicts Exs.B-1, B-48 and B-49. When evidently

Akula Mallaiah was shown as encroacher No.77, but No.77 was added to Survey No.403 and the respondents managed to obtain the certified copy in the name of Akula Mallaiah as if he was the pattadar in respect of Ac.5.00 of land under the non-existing Survey No.403/77. On account of these twin reasons, the Court eschewed from consideration Exs.B-1, B-48 and B-49. It has been sought to be contended before us that the learned Special Court jumped into certain conclusions that the names of several persons mentioned *qua* Survey No.403/77 are encroachers, when it was not shown specifically as encroachers. It was further contended that there was no opportunity for counsel to peruse the

original Khasra Pahani. In that view of the matter, this Court directed the learned Special Government Pleader to see that the original records are perused. Accordingly, the original Khasra Pahani was produced and perused in open Court in the presence of the learned counsel for the petitioners as well as the Special Government Pleader. Though it has not been mentioned in the original Khasra Pahani that the list of names mentioned *q u a* Survey No.403 as encroachers, the original thus contained the names of several persons including the name of Adi Mallaiah at Serial No.74 showing the number as 77 in another column. That list may be the list of encroachers or list of pattadars, which requires to be clarified.

The learned counsel appearing for the petitioners represents that the Khasra Pahani will not contain the names of the encroachers since it is the record, which shows the names of the pattadars.

The said contention was sought to be repelled by the Special Government Pleader that part of the record which contains several columns, containing various particulars, shown the names of pattadars and part of the record, which does not contain such columns, contains the names of encroachers of the Government land. Before adverting these rival contentions, one thing clearly emerges from the record that there is a Survey No.403, which contain several names in the original record including Adi Mallaiah as against the Serial No.74 No.77 and there is no Survey No.403/77. When the original has been produced before this Court, it has not been shown before us that it contains the Survey

No.403/77. However, Ex.B-1 certified copy of Khasara Pahani shows the Survey No.403/77. Of course, it can be explained that since Survey No.403 contains several names and the name of
Adi Mallaiah shown at Serial No.74 giving another No.77 *qua* his name. Perhaps by giving certified copy showing the name of
Adi Mallaiah alone, both these numbers could have been mentioned in the certified copy. The explanation appears to be plausible. However, it shall not have been adduced obliviously of the fact that the specific stand of the respondents taken *inter alia* in the counter is that Survey No.403/77 stands registered in the name of Adi Mallaiah as the patttadar thereof. That stand has not been substantiated before us. As discussed hereinabove, the fact remains that the Khasra Pahani thus contains the name of
Adi Mallaiah. The Sesala Pahani, which was also produced in original before us also shows the name of Adi Mallaiah as against the Survey No.403, but in one of the columns contained therein,
it has been mentioned specifically as Government poramboke. Sesala Pahani pertains to the years 1955 to 1958. If the name of Adi Mallaiah has been mentioned in original Khasra Pahani as pattadar, it is quite unexplainable as to why in that very subsequent revenue record, it has been noted as Government poramboke. The entry does show that it is Government poramboke land. The certified copy thereof has been produced on the side of the respondents as Ex.B-48. Apart from the controversy that
Ex.B-48 and B-49 certified copies can be relied or cannot be relied, the

fact remains that Ex.B-48 contains entry to the effect that the land in dispute is Government poramboke. These entries shall be explained by the respondents cogently and convincingly.

It is apt at this juncture to consider the evidence of P.W.2 again. The unshaken testimony of P.W.2 shows that Survey No.403 correlates to old Survey No.129/1 of Shaikpet village and old Survey No.129/1 stood registered in the records as Government poramboke land. The extent covered by the said survey number is the large extent of two thousand acres and odd. A part of the land covered by old Survey No.129 was segregated as patta land, assigning separate sub-division numbers as 2 to 10. Those Survey Nos.129/2 to 10 are not correlated to new Survey No.403.

This specific and emphatic assertion made by P.W.2 has not been shown before us in any manner as inaccurate or false.

No attempt has been made to show demonstrably by sending for the original records which, according to the witnesses, are available in the office of the Deputy Director Survey and Settlement.

There is no need and reason at this stage to send for those documents since the evidence of the witness stands un-assailed and unshaken in the cross examination. That part of testimony that the land in dispute was originally covered by Survey No.129 of Shaikpet village and that later it was correlated to Survey No.403, is an admitted fact. Even according to the respondents, the land in dispute was covered by Survey No.403 but they added sub-division 77. However, they are not able to

show before us from the original Khasara Pahani that there exists Survey No.403/77. Therefore,
their specific stand taken *inter alia* in the counter that the land in dispute is covered by Survey No.403/77 has not been shown in any manner to be correct before us.

Although, at the initial stage, we are of the view that the learned Special Court jumped into certain conclusions that in the original Khasara Pahani the names that have been mentioned are those of the encroachers when the record does not contain any such heading, but having regard to the clear and cogent evidence of P.W.2, we are of the considered view that there is no reason to doubt the same. What is required is to consider the entries in the original Khasara Pahani, Exs.B-1, B-48 and B-49 along with the oral testimony of P.W.2. Unfortunately, in this case,
the original Khasara Pahani was in highly mutilated condition.
But that does not mean that we shall have to ignore the same in toto. For the selfsame reason we see no error or irregularity that has been committed by the Special Court in having eschewed it from consideration. Even otherwise when the original is produced,
there is no point in perusing Ex.B-1, and if for any reason, Ex.B-1 is not consistent, when the original record that has been placed before us has not been disputed, the entries contained in the original will prevail obviously vis-à-vis the entries contained in
Ex.B-1, so also the entries contained in the Ex.B-48 and B-49. Therefore,

there are no compelling reasons for us to find fault with the observations made by the Special Court. If it is the situation,
it requires proper explanation as to how Ex.B-1 certified copy could be given, containing all the full entries, when the original is in mutilated condition and does not contain all the relevant columns. It is not a case where why Ex.B-1 shall not be doubted being the certified copy issued by the competent Court. It is obvious that the land covered by Survey No.403 which is correlated to Survey No.129/1 is Government poramboke land. It is further clear that according to the testimony of P.W.2 that the land is known as Kancha Thattikhana, which is a grazing land, and even the respondents confirmed that the land in Survey No.403 is Kancha Thattikhana. In that view of the matter, we have no hesitation to hold that the land covered by Survey No.403 is Government poramboke land. Therefore, there is no exaggeration in mentioning the names including the name of late Akula Mallaiah @ Adi Mallaiah as encroachers of the said land. For the above reasons, we see no compelling reasons to interfere with the findings of the learned Special Court.

Apropos the other plea that the respondents have perfected the title by adverse possession having been in possession for a long period, we are afraid that at threshold we cannot accept the said contention. The reason is obvious that respondents having taken a plea specifically that Adi Mallaiah is the pattadar of the land covered by Survey No.403/77 and pleaded thereby a derivative title, it is not open for them to plead

simultaneously that they perfected the title by means of adverse possession. Derivative title and title of prescription cannot go together. The respondents had not taken the said plea of prescription as an alternative plea, therefore, their contention merits no consideration. Not only that, they have not specifically pleaded as to from what date their possession has become adverse, to the real owner, and proved that their possession is adequate in publicity, in extent and continuity. Therefore, that plea must fail.

Coming to the plea that, at any rate, having regard to the long standing possession, the respondents cannot be called as land grabbers. Endeavour has been made to show before us by reading the definition of "land grabber" and "land grabbing" enjoined under Section 2 clauses (d) and (e) and the decision of the Apex Court

rendered in the case of ***KONDA LAKSHMANA BAPUJI v. GOVT. OF A.P. AND OTHERS***[1] and ***GOUNI SATYA REDDI v. GOVT. OF A.P. AND OTHERS***[2]***.*** A perusal of both the provisions contained in Clauses (d) and (e) of the Act shows that a person can be called as a grabber, when he grabs the land illegally and without any entitlement thereto and for the purpose of either selling, transferring, leasing or constructing structures thereon or for collecting money etc., as enumerated *inter alia* in the clause (3) of Section 2 of the Act. The Apex Court in ***KONDA***

LAKSHMANA BAPUJI's case (1 supra), by scanning through both the provisions contained in Section 2 Clauses (d) and (e) of the Act, discerned the essential ingredients contained therein and enumerated them specifically in the judgment. But in our considered view, the ratio of the judgment shall have to be discerned by reading the judgment as a whole. That was a case where the appellant had claimed as pattadar of the land in dispute and constructed huge structure thereon. Eventually at the culmination of enquiry, the Special Court found the appellant as land grabber and it was upheld throughout in the hierarchy of the Courts. If that were to be considered when the person, who was found to be in possession, occupying the land knowingly that it is not his land and without any entitlement thereto, that person can be squarely called as a grabber of the land. In the case of ***GOUNI SATYA REDDI*** (2^{nd} supra) facts are little bit different. The land in question was sought to be sold by the general power of attorney holder of the pattadar and another person claiming himself to be the general power of attorney holder of that pattadar. Disputed sale was sought to be made by the former one. The appellant therein purchased the property from the first general power of attorney holder. Before purchasing the said property, care has been taken by him in having issued the public notice by means of paper publication notifying objections. No objections, whatsoever, have been set forth by anybody and from any corner. Then only he purchased the property under a registered sale deed from the first general power of attorney holder. Even if, eventually, it was held that

there had been no title to his land, consequently, the purchaser could not be dubbed as land grabber, since there was no knowledge on his part about the title of the land. Therefore, eventually it was held that he was not a land grabber. The facts in the instant case were undoubtedly different that it is obvious from the record the late Akula Mallaiah @ Adi Mallaiah had no title and he was not the pattadar, his occupation of the land covered by Survey No.403 which was correlated by Survey No.129/1 is obviously without any entitlement thereto. The necessary intention or knowledge can squarely be attributed to him, which in fact, is the observation made by the Apex Court in ***KONDA LAKSHMANA BAPUJI's*** case (1 supra). Therefore, the respondents cannot now escape from the conclusion that the occupation of the land in dispute of late Akula Mallaiah @ Adi Mallaiah shall without any entitlement thereto and consequently can be called as grabber of the land. For the above reasons, the contention that the respondents cannot be called as land grabbers cannot be countenanced.

It then takes us to the other question as to whether the respondents 1 to 3 are liable to pay the compensation, if so,
to what quantum.

No doubt, the Special Court has taken the view against the respondents 1 to 3 since they made certain alienations to other respondents, who were eventually the sufferers. Therefore,
the Special Court spared the respondents 4 to 25 and fixed the

compensation against the respondents 1 to 3. But the methodology adopted by the Special Court in assessing the compensation is not quite intelligible. There must be some basis for ascertaining the quantum. The learned Special Court has taken the market value of the property, at the time of enquiry, and multiplied it with the number of years during which the land in dispute has been in occupation of the respondents. We are afraid that cannot be the valid basis. An enquiry shall have to be conducted before ascertaining the damages and both sides can be given an opportunity to adduce evidence in support of their claims and from the data and the evidence adduced on either side, the Court has to fix the compensation. In this case, both the parties have not let in any evidence on the quantum of damages. The learned Special Court ascertained the land damages on its own basis, as discussed hereinabove, which is not quite intelligible. We are afraid we cannot concur with such methodology that has been adopted by the learned Special Court. We are of the considered view that there has been absolutely no reasons for ascertaining that huge quantum of Rs.5,92,59,400/- as damages in this case. Damages shall have to be ascertained on the rent being fetched or on the hypothetical basis of reasonable rent that can be fetched by the land.

Neither course has been followed in this case and there has been no evidence in support thereof, therefore that part of the judgment of the learned Special Court whereunder damages have been ascertained against respondents 1 to 3 cannot be sustained.

We may hasten to add that the conclusion that the applicant is entitled to

damages and damages can be awarded only against respondents 1 to 3 cannot be found fault with. Since absolutely there is no material on record to ascertain the damages, we are afraid we cannot sustain that conclusion.

For the above reasons, the Writ Petition No.29190 of 1998 is partly allowed and the Writ Petition Nos.28787 of 1998 and 14374 of 2004 are dismissed. Under the circumstances, we direct both the parties to bear their respective costs.

T.CH. SURYA RAO, J

Date: 24-08-2006

G. CHANDRAIAH,

LSK

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[1] (2002) 3 Supreme Court Cases 258

[2] 2004 (7) SCC 398